Supreme Court, U.S.
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No. 04-381

IN THE

Supreme Court OF United States

De Shen Petitioner

vs.

T.D. Waterhouse Investor Service Respondent

On Petition For Writ Of Certiorari To

US Court Of Appeals For The First Circuit

REPLY BRIEF OF PETITIONER

De Shen

11 Summer Ave

Malden, MA 02148

(781) 324-3285

Dec. 12, 2004

LIST OF PARTIES

(1) PETITIONER: De Shen

(2) RESPONDENT: T.D. Waterhouse Investor Service, Inc

(3) Judges in United States Court of Appeals for the First Circuit:

Levin H. Campbell;

Juan R. Torruella;

Bruce M. Selya

(4) Judge in United States District Court for the District of Massachusetts:

William G. Young

(5) Fraud Maker who are not listed as RESPONDENT:

Suzanne Green --- NASD arbitration administrator

Elizabeth R. Clancy --- NASD Associate Vice President and Regional Director

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I. Fraud made by Ms. Elizabeth R. Clancy, Ms. Suzanne Green, and the Respondent should be punished

Although this case started with a relatively minor issue (stock trade fraud or stock trade mistake), at current stage, it brought up some very critical and very serious issues:

(1) Whether there are some organizations or special roles in USA are beyond (or not under restricted by) the US Constitution and US Law.

Some organizations, (e.g. NASD), are acting as second justice system. Theoretically, employee work in such organization should be the model of following and obeying US Laws and US Constitution. And Petitioner believes 99% of employee of such organizations (e.g. NASD), are honest and dependable.

However, this case indeed exposed two fraud makers in NASD:

Ms. Suzanne Green --- NASD arbitration administrator

Ms. Elizabeth R. Clancy --- NASD Associate Vice President and Regional Director

Those two fraud makers, along with Mr. Derek Anderson, Mr. Pete S. Michaels, the counsel of

Respondent, formed a gang of four on this fraud issue. Among these four, Ms. Elizabeth R. Clancy is the head of this conspiracy gang.

When the Petitioner discovered "the fraud on violating the rules of the arbitration panel selection"[1], the Petitioner asked Ms. Suzanne Green and the Respondents six simple questions. Neither Ms. Suzanne Green nor the Respondents were able to answer those six simple questions. Ms. Suzanne Green only dare to orally telling lies that the respondent submitted its ranking form on Dec. 24, 2001. It is Ms. Elizabeth R. Clancy **forged** the entire respondent ranking form submission story in a letter to Petitioner. (See Supplemental Appendix of Petition Page 56 – 58). Although the Respondent did not submit its ranking form by the deadline of Dec. 24, 2001, in Ms. Elizabeth R. Clancy's letter of March 26, 2002, she wrote "Respondent's ranking form was sent to us by facsimile and received in our office on December 11, 2001, with an original copy arriving on December 12, 2001. I enclose for your review a copy of the date stamped cover letter that accompanied Respondent's ranking form." **The NASD Associate Vice President and Regional Director were telling lie and forging documents!!!** Is this a serious criminal action? If Martha Stewart has to go to Jail for six Months due to her relatively

[1] See Supplemental Appendix of Petition: Page 73 – 75, Also see Appendices For Writ of Certiorari: Page 123 – 126, Page 109 – 116, Page 81 – 83, Page 18 – 20

minor trade fraud, how many years that Ms. Elizabeth R. Clancy should be in Jail due to her serious criminal action? In the fraud of "'Cooking' Hearing Tape", at least two critical sentences were erased from Arbitration Hearing Tape[2]. **If a second Justice System relies on telling lie, falsifying records, and forging documents to run business, can US people get real justice?** For fighting against these frauds, the petitioner submitted several motions to the District Court and US Court of Appeals. The District Court Judge knows this is a serious issue, Mr. Young said: "your motion is a serious one." (See Supplemental Appendix of Petition, Page 108, line 13) However, the District Court Judge did not investigate this serious issue and did not punish this serious criminal action, is it indicating that the District Court Judge ignored his duty? The judges in the US Court of Appeals reject to hold a hearing. Is it a bureaucratic behavior?

The Petitioner first time exposed "the fraud on violating the rules of the arbitration panel selection" on Aug. 10, 2002[3], more than TWO years has passed, this fraud has not been punished yet.

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[2] See (I) Appendices for writ of certiorari Page 83 line 14 – Page 85 line 11 (II) Appendices for writ of certiorari Page 91, Paragraph (b), start from line 20. (III) Appendices for writ of certiorari Page 104 line 28 – Page 106 line 23 (IV) Supplemental Appendix Of Petition Page 68-69

[3] See Supplemental Appendix Of Petition For Writ of Certiorari, Page 71 - 75

During Feb. 2003 to April 2003, the Petitioner submitted two motions to the District Court:

(i) Motion To Request Ms. Kelly Davis To Testimony on the Court[4]

(ii)Motion To Add NASD Dispute Resolution, Inc to Defendant List[5]

However, both these two motions were denied by the District Court Judge. Mr. Young wrote on April 20, 2003[6]: "In view of the appeal, to the extent **this court has jurisdiction**, this motion and that filed on 3/05/03 [35-1] (request for Ms. Kelly Davis to Testimony on the Court) are both denied."

If the District Court DOES NOT have the power to punish the fraud made by NASD Associate Vice President and Regional Director and the Respondent, then which Court have the power to punish this fraud? **Does Supreme Court have the power to punish the fraud made by NASD Associate Vice President and Regional Director and the Respondent?** Are all frauds, which made by NASD employee and the Respondent NOT punishable? Are NASD and the Respondent above the US LAW and US Constitution?

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[4] See Supplemental Appendix Of Petition For Writ of Certiorari, Page 116 – 119

[5] See Supplemental Appendix Of Petition For Writ of Certiorari, Page 120 - 122

[6] See Supplemental Appendix Of Petition For Writ of Certiorari, Page 123

In the speech on explaining **the new law passed by Congress and Senate** "Tough New Enforcement Initiatives for Reform on Corporate Responsibility", President Bush said:

"We've learned of some business leaders obstructing justice, and misleading clients, falsifying records, business executives breaching the trust and abusing power."

.....

"And government can ensure that those who breach the trust of the American people are punished."

.....

"Defrauding investors is a serious offense, and the punishment must be as serious as the crime."

.....

"If more scandals are hiding in corporate America, we must find and expose them now, so we can begin rebuilding the confidence of our people and the momentum of our markets."

According to the Executive Order of July 9, 2002, according to the above speech given by President Bush, the fraud made by Ms. Elizabeth R. Clancy, Ms. Suzanne Green, and the Respondent should be punished. Do not punish this fraud is a corruption behavior.

The petitioner's questions (1) – (7) in the Petition for Writ of Certiorari are all related to this serious

issue. The petitioner's questions (1) – (7) are presented according to basic principle of logic deduction. The Respondent attacking Petitioner's questions indicates that the Respondent do not understand the basic principle of logic deduction.

(2) **Justice is truth in action**

Lawyers should be honest when defending their clients. However, in handling this case, the Lawyers of the Respondent defended their client by hiding the truth, telling lies and making perjury.

Ms. Kelly Davis is the NASD employee who directly handled the arbitration panel selection. After the deadline of ranking form submitting, Ms. Kelly Davis committed that the Respondent did not submit its ranking form by the deadline of Dec. 24, 2001. Two month later, in a telephone conversation with Ms. Kelly Davis, she confirmed that the Respondent did not submit its ranking form by the deadline of Dec. 24, 2001[7]. **Until now, Ms. Kelly Davis has not directly lied to me yet on this issue.**

When Petitioner submitted "MOTION On Request to arrange Ms. Kelly Davis to testimony on this court"[8] in the US Court of Appears on Nov. 3, 2003,

[7] See Appendices for writ of certiorari Page 125 line 5 – Page 126 line 4.
[8] See Appendices for writ of certiorari Page 109 - 116

the lawyers of Respondent submitted "MEMORANDUM OF TD WATERHOUSE INVESTOR SERVICES, INC IN OPPOSITION TO DE SHEN'S MOTION TO TAKE THE TESTIMONY OF KELLY DAVIS OF THE NASD[9]", tried to preventing Ms. Kelly Davis speak out the truth.

Following the baseline of lie set by Ms. Elizabeth R. Clancy, Mr. Derek Anderson made a perjury in his Affidavit[10] on Nov. 24, 2003.

In order to punish the Respondent's fraud, lie and perjury, the Petitioner submitted two motions:

(i) MOTION On Request Double Penalty To The Defendant For Its Continually Telling Lie[11]

(ii)MOTION On Requesting Further Double Penalty To The Defendant For It Hire Lawyers to Lie in Affidavit[12]

Justice is truth in action. This is the basic principle of Judgment.

However, the judges in the US Court of Appeals ignored this basic judgment principle. They do not want to hear the truth. They do not want to make judgment based on the truth. They denied arranging

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[9] See Appendices for writ of certiorari Page 117 - 120
[10] See Appendices for writ of certiorari Page 121 - 122
[11] See Appendices for writ of certiorari Page 123 - 128
[12] See Appendices for writ of certiorari Page 129 - 150

Ms. Kelly Davis to speak out the truth in the US Court of Appeals. They denied punishing the fraud made by Ms. Elizabeth R. Clancy, Ms. Suzanne Green, and the Respondent. They denied punishing the Respondent's lie and perjury.

Such misjudgment should be reviewed by Supreme Court. The petitioner's questions (8) – (9) in the Petition for Writ of Certiorari are related to this serious issue.

The Respondent attacked the Petitioner in the first page of its 'Brief in Opposition': "Petitioner has preceded *pro se* throughout these proceedings and continues to do so." The Petitioner proudly to reply to the Respondent: "Attorney *pro se* is much better than Attorney *liar*!"

II. Petitioner has the right to speak out in the US Court of Appeals

The Bill Of Right, First Amendment are quoted as following:

Amendment I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech**, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

As presented in last paragraph, this case is a serious case. The District Court judge feels that the District

Court has jurisdiction, which imply they do not have the power to punish fraud made by NASD employee and the Respondent. If the judges in US Court of Appeals think they do not have the power to punish fraud made by NASD employee and the Respondent, they have to write down precisely. In stead, the judges in US Court of Appeals just simply denied to hold a hearing and denied all the motions submitted by Petitioner.

The US Court of Appeals and the Respondent referenced the Rule 34 of the Federal Rules of Appellate Procedure, however, the three judges do not qualify to apply Rule 34 to deny hearing on this case, since the reason of they denying on holding a hearing on this case does not belong to any of the three reasons listed in Rule 34:

(A) This case is a serious case (Two frauds are exposed in this case);

(B) There are issues which the District Court has jurisdiction, hence it needs higher level Court to make judgment;

(C) Some investigations are needed in order to punish the frauds made by NASD employee and the Respondent.

According to the above reasoning, the judges in the US Court of Appeals denying holding a hearing on this case is abridging the freedom of speech. Hence

it is violated the Bill Of Right. Hence it is violated the US Constitution.

III. The fraud changed the entire Arbitration Result

Without the fraud made by Ms. Elizabeth R. Clancy, Ms. Suzanne Green, and the Respondent, the arbitration result will be entirely different with the current arbitration result. Without the fraud, the arbitration panel should include the first three arbitrators selected by Petitioner according to the Arbitration rules, since the Respondent missed the deadline. From the tracking records, those three arbitrators are firmly standing at investors' side to fight against trading frauds. Actually, Petitioner later asked one of these Arbitrators, he does believe there was one trade mistake in the case I described.

Hence, the fraud made by Ms. Elizabeth R. Clancy, Ms. Suzanne Green, and the Respondent conducted the current un-fair arbitration results.

CONCLUTION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted. The two frauds made by Ms. Elizabeth R. Clancy, Ms. Suzanne Green, and the Respondent should be punished.